

In re Patent Application of:
Saltiel
Serial No.: 10/649,287
Filed: August 27, 2003

REMARKS

Applicant greatly appreciates the Examiner's careful review of the application. The typographical errors noted by the Examiner in the specification have been corrected. Additionally, the following remarks are respectfully offered in support of the patentability of the pending claims. The claim amendments and these remarks focus on the pending independent claims since, if these are found patentable, their respective dependent claims will be patentable as well.

Typographical Errors and Claim Objections Have Been Addressed

As pointed out by the Examiner, Applicant acknowledges that the specification is lengthy. Applicant has reviewed same and has not detected any further errors in same.

The typographical errors noted by the Examiner in the specification have been corrected, with the exception of those on pages 28 and 32, which Applicant believes to have been introduced during scanning of the application at the Office.

Undersigned counsel apologizes for the inadvertent introduction of blank page 31, which appears to have been caused by a pagination error during word processing. Blank page 31 should be deleted and the following pages should be renumbered accordingly.

The objection to claim 6 has been addressed by addition of a colon following the word "comprising."

Applicant, therefore, believes all of the concerns expressed by the Examiner with regard to the informalities in the specification have been corrected.

The Claims Are Neither Anticipated Nor Made Obvious By The Stevens Reference

The Examiner has cited the reference by Stevens (US Patent No. 4,686,023) as anticipating independent claims 6, 11 and 24. Applicant, however, points out that the

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present invention discloses a method of producing vitamin D by irradiating its precursors without the use of a photosensitizer. Stevens teaches the use of a photosensitizer in the second step of his method and requires at least the presence of anthracene in order to produce vitamin D by his irradiation method. See Stevens at column 3, lines 43-47, and lines 56-57; also column 4, lines 54-56; also claim 1 at column 7, lines 7-8.

Therefore, the reliance on the Stevens reference in rejecting the claims is not appropriate, since Stevens does not excite tachysterol directly in the second irradiation step. Stevens adds a sensitizer, anthracene, and excites it. The anthracene then transfers triplet excitation to tachysterol. The Stevens reaction involves completely different excited states than the singlet excited state that is directly formed in the present invention. Furthermore, the Stevens method would require the removal of the sensitizer and its byproducts in order to obtain the pure vitamin. No such contamination is found in the present method.

The independent claims have been amended to clarify that the present method is conducted without photosensitizer in the reaction mixture. The non-use of photosensitizer is supported in the application as filed, as there is no mention of any photosensitizer being present in the reaction mixture. Accordingly, having fully disclosed the invention and its best mode, Applicant suggests that it would be clear to those skilled in the art that no photosensitizer is required in the present method.

The Stevens reference, which teaches the need for a photosensitizer, cannot therefore anticipate the pending claims. Applicant, thus, respectfully requests that the claim rejections based on anticipation be withdrawn.

Additionally, independent claims 1 and 18 stand rejected as obvious in view of the Stevens reference. As noted above by Applicant, the Stevens reference teaches that a photosensitizer is required in order to catalyze the photoconversion of precursors into

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vitamin D. The present invention does away with the need for a photosensitizer and, therefore, cannot be made obvious by the Stevens reference, as Stevens teaches away from the present method and would not have led those skilled in the art to make the presently claimed invention.

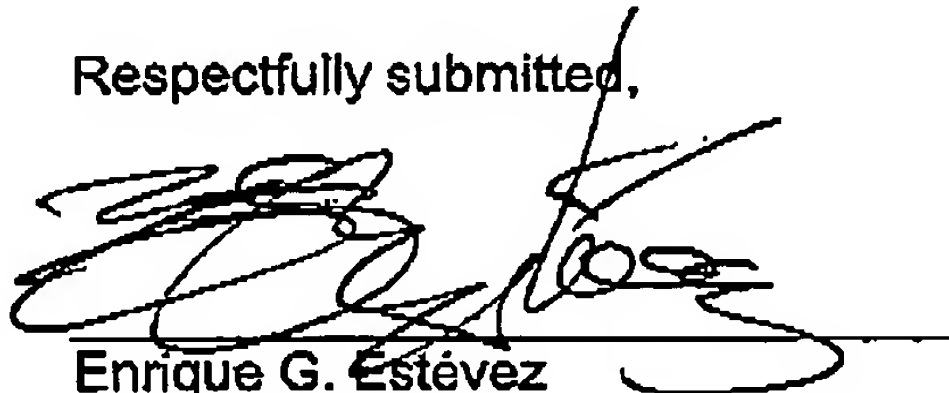
For those reasons, Applicant respectfully asserts that no *prima facie* case of obviousness has been established against the pending claims. Applicant, thus, respectfully requests that this rejection be withdrawn as well.

Conclusion

In view of the amendments and the remarks presented herein, it is submitted that these claims are patentable. In addition, their respective dependent claims, which recite yet further distinguishing features, are also patentable and require no further consideration.

If the further prosecution can be facilitated through a telephone conference between the Examiner and the undersigned, the Examiner is respectfully requested to telephone the undersigned at his convenience.

Respectfully submitted,




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CERTIFICATION OF FILING VIA FACSIMILE

I hereby certify that the foregoing is being filed with the United States Patent and Trademark Office via its centralized facsimile number at 571-273-8300 this 1st day of November, 2005.



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